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SUBJECT: BOMBAY HIGH COURT RULES AGAINST CENSORSHIP

1. ON FEB 10 A DIVISION BENCH OF THE BOMBAY HIGH COURT CONSISTING OF JUSTICE B.P.MADON AND JUSTICE M.H.KANIA DELIVERED A 250-PAGE JUDGMENT ON THE APPEAL FILED BY BINOD RAO, PRESS ADVISOR TO THE GOVT OF MAHARASHTRA, AGAINST AN EARLIER ONE-JUDGE DECISION OF JUSTICE R.P.BHATT IN WHAT HAS COMMONLY BECOME KNOWN AS "THE MASANI CASE".

2. BY WAY OF REVIEW, THE CASE AROSE WHEN THE PRESS ADVISOR (CENSOR) DISALLOWED PUBLICATION JULY 15 OF ELEVEN ITEMS BY MINOO MASANI IN HIS MAGAZINE FREEDOM FIRST. MASANI CHALLENGED THE PRESS ADVISOR'S ORDER THROUGH WRIT DECIDED IN HIS FAVOR BY JUSTICE BHATT, WHOSE DECISION ALLOWED MASANI TO PUBLISH THE ARTICLES. BINOD RAO APPEALED BHATT'S JUDGMENT, WHICH WAS HEARD BY JUSTICES KANIA AND MADON, WHOSE DECISION ALLOWS MASANI TO PUBLISH NINE OF THE ELEVEN ARTICLES IN QUESTION.

3. PUBLICATION OF THE KANIA/MADON DECISION FIRST APPEARED IN A.D.

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GORWALA'S LITTLE TRACT, OPINION, ON FEB 17. THE INDIAN EXPRESS

FOLLOWED WITH A LONG FRONTPAGE ARTICLE ON FEB 21, UNDER THE HEADLINE "CENSOR CAN'T STIFLE ALL DISSENT". OTHER MAJOR BOMBAY PAPERS HAVE FOLLOWED WITH HEADINGS AS FOLLOWS: FREE PRESS JOURNAL- "CENSOR'NURSEMAID OF DEMOCRACY, NOT GRAVE DIGGER"; TIMES OF INDIA - "COURT CLARIFIES CENSORS' DUTY"; JANMABHOOMI (GUJARATI EVENING PAPER) - "CENSOR IS NOT ABOVE PARLIAMENT."

4. ACCORDING TO THE JUDGES "(AS QUOTED IN THE PRESS), "THE PRESS IS NOT ONLY AN INSTRUMENT FOR DISSEMINATING INFORMATION BUT ALSO A POWERFUL MEDIUM FOR MOULDING PUBLIC OPINION BY PROPAGANDA" AND "TRUE DEMOCRACY CAN ONLY THRIVE IN A FREE CLEARING HOUSE OF COMPETING IDEOLOGIES AND PHILOSOPHIES - POLITICAL, ECONOMIC AND SOCIAL - AND IN THIS THE PRESS HAS AN IMPORTANT ROLE TO PLAY. THE DAY THIS CLEARING-HOUSE CLOSES DOWN WOULD TOLL THE DEATH KNELL OF DEMOCRACY".

5. THE JUSTICES GO ON TO SAY THAT "IT IS NOT THE FUNCTION OF THE CENSOR ACTING UNDER THE CENSORSHIP ORDER TO MAKE ALL NEWSPAPERS AND PERIODICALS TRIM THEIR SAILS TO ONE WIND OR TO TOW ALONG IN A SINGLE FILE OR TO SPEAK IN CHORUS WITH ONE VOICE. IT IS NOT FOR HIM TO EXERCISE HIS STATUTORY POWER TO FORCE PUBLIC OPINION IN A SINGLE MOULD OR TO TURN THE PRESS INTO AN INSTRUMENT FOR BRAINWASHING THE PUBLIC. UNDER THE CENSORSHIP ORDER, THE CENSOR IS APPOINTED THE NURSEMAID OF DEMOCRACY AND NOT ITS GRAVE-DIGGER."

6. COMMENTING ON DISSENT, THE JUSTICES EXPRESSED THE VIEW THAT "DISSENT FROM OPINIONS HELD BY THE MAJORITY AND CRITICISM AND DISAPPROVAL OF MEASURES INITIATED BY A PARTY IN POWER MAKE FOR A HEALTHY POLITICAL CLIMATE, AND IT IS NOT FOR THE CENSOR TO INJECT INTO THIS THE LIFELESSNESS OF FORCED CONFORMITY. MERELY BECAUSE DISSENT, DISAPPROVAL AND CRITICISM ARE EXPRESSED IN STRONG LANGUAGE IS NO GROUND FOR BANNING ITS PUBLICATION."

7. LAYING DOWN THE LIMITS OF DISSENT, THE JUSTICES EXPRESSED THE VIEW THAT "DISSENT CANNOT TAKE THE FORM OF INCITEMENT TO REVOLUTIONARY OR SUBVERSIVE ACTIVITIES, FOR THEN INSTEAD OF SERVING DEMOCRACY, IT WOULD SUBVERT IT." AS A GUIDELINE FOR EXERCISING THE CENSORSHIP AUTHORITY, THE COURT OBSERVED THAT IT IS THE CENSOR'S DUTY "TO SEE THAT DISSENT AND PROTEST DO NOT OVERSTEP THE PERMISSIBLE LIMITS," AND THE FIRST THING TO WHICH THE CENSOR LIMITED OFFICIAL USE

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MUST ADDRESS HIS MIND IS WHETHER THE PARTICULAR WRITING IS OF SUCH A NATURE AS WOULD ADVERSELY OR PREJUDICIALLY AFFECT SECURING THE DEFENSE OF INDIA AND CIVIL DEFENCE, THE PUBLIC SAFETY, THE MAINTENANCE OF PUBLIC ORDER AND INTERNAL SECURITY. THE CENSOR SHOULD THEN TRY TO CONSIDER THE EFFECT THAT THE ARTICLES WOULD PRODUCE ON HIS OWN MIND AND ON THE MIND OF THE AVERAGE READER. THE ARTICLE MUST BE READ AS A WHOLE AND IN ITS PROPER CONTEXT. STRAY SENTENCES AND ISOLATED PASSAGES HERE AND THERE ARE NOT TO

BE TAKEN AS A GUIDE TO THE INTENT OF THE WRITER."

8. THE JUSTICES OBSERVED THAT "THE ROLE THE CENSOR IS CALLED UPON TO PLAY IS A DELICATE AND IMPORTANT ONE" AND "ON HIS SHOULDERS RESTS A GREAT DEAL OF RESPONSIBILITY. THOUGH HIS WORK MUST BRING HIM PUBLIC DISFAVOR, HE HAS NOT TO COMPENSATE HIMSELF FOR THIS BY SEEKING TO WIN GOVERNMENTAL FAVOR BY A DISPLAY OF EXCESSIVE ZEAL" BUT RATHER "HE HAS TO PRESERVE A FINE BALANCE."

9. COMMENT: AS ONE NOTED OPPOSITION LEADER COMMENTED TO US RECENTLY, AT LEAST SOME ELEMENTS OF THE INDIAN JUDICIARY HAVE UPHELD INDIAN TRADITIONS OF DEMOCRACY. THE BOMBAY HIGH COURT, MORE THAN ANY OTHER HIGH COURT IN THE COUNTRY, HAS SUPPORTED INDEPENDENCE OF THE PRESS (THE LOKURKAR DECISION IS ANOTHER EXAMPLE). WE HEARD ORIGINALLY THAT THE APPEAL IN THE LOKURKAR CASE WOULD BE HANDED DOWN SOON AFTER THE MASANI DECISION, SO THAT JUDGMENT MIGHT ALSO BE EXPECTED SOON. MASANI HIMSELF TOLD US FEB 23 THAT "LOKURKAR WILL ALSO WIN SINCE HIS CASE WILL FOLLOW THE SAME LAW." MASANI ALSO SAID THAT THE STATE MIGHT APPEAL TO THE SUPREME COURT BUT HE STATED THAT IT IS NOT YET CLEAR WHETHER OR NOT THE STATE WILL DO SO.

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